

## Calendar No. 452

106TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
106-236

### EDUCATION LAND GRANT ACT

MARCH 9, 2000.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

### REPORT

[To accompany H.R. 150]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 150) to authorize the Secretary of Agriculture to convey National Forest System lands for use for educational purposes, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the “National Forest Education and Community Purpose Lands Act”.

#### SECTION 2. FINDINGS.

Congress finds that—

(1) communities adjacent to and surrounded by National Forest System land have limited opportunities to acquire land for recreational, educational and other public purposes;

(2) in many cases, such recreational, educational and other public purposes are not within the mission of the Forest Service, but would not be inconsistent with land and resource management plans developed for the adjacent national forest;

(3) such communities are often unable to acquire land for such recreational, educational and other public purposes due to extremely high market value of private land resulting from the predominance of Federal land in the local area; and

(4) the national forests and adjacent communities would mutually benefit from a process similar to that available to the Bureau of Land Management under the Act of June 14, 1926 (commonly known as the “Recreation and Public Purposes Act”) (43 U.S.C. 869 et seq.).

**SECTION 3. DEFINITIONS.**

In this Act:

(1) **HAZARDOUS SUBSTANCE.**—The term “hazardous substance” has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601).

(2) **PARCEL.**—

(A) **IN GENERAL.**—The term “parcel” means a parcel of land under the jurisdiction of the Forest Service that has been withdrawn from the public domain.

(B) **EXCLUSION.**—The term “parcel” does not include land set aside or held for the benefit of Indians.

(3) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture, acting through the Chief of the Forest Service.

**SEC. 4. DISPOSAL OF NATIONAL FOREST SYSTEM LAND FOR PUBLIC PURPOSES.**

(a) **AUTHORITY.**—Upon receipt and approval of an application in writing, the Secretary may dispose of National Forest System land to a State or a political subdivision of a State as provided in this section on the condition that the parcel be used for recreational, educational and other public purposes, as determined by the Secretary.

(b) **CONDITIONS OF DISPOSAL, TRANSFER OF TITLE, OR CHANGE IN USE.**—Before any parcel may be disposed of or any application for a transfer of title or a change in use of a parcel is approved under this section, the Secretary shall determine that—

(1) the parcel is to be used for an established or proposed project that is described in detail in the application on the Secretary, and that would serve public objectives (either locally or at large) that outweigh the objectives and values which would be served by maintaining such parcel in Federal ownership;

(2) the applicant is financially and otherwise capable of implementing the proposed project; and

(3) the acreage is not more than is reasonably necessary for the proposed use.

(c) **PUBLIC PARTICIPATION.**—The Secretary shall provide an opportunity for public participation in a disposal under this section, including at least one public hearing or meeting, to provide for public comments.

(d) **REVIEW OF APPLICATIONS.**—

(1) **IN GENERAL.**—When the Secretary receives an application under this section to convey a parcel for recreational, educational, or other public purposes related to emergency services, the Secretary shall—

(A) before the end of the 14-day period beginning on the date of the receipt of the application, provide notice of that receipt to the applicant; and

(B) before the end of the 120-day period beginning on that date—

(i) make a final determination whether or not to convey land pursuant to the application, and notify the applicant of that determination;

or

(ii) submit written notice to the applicant containing the reasons why a final determination has not been made.

(2) **OTHER APPLICATIONS.**—When the Secretary receives an application under this section to convey a parcel for any public purposes other than those under paragraph (1), the Secretary shall—

(A) before the end of the 14-day period beginning on the date of receipt of the application, provide notice of that receipt to the applicant; and

(B) take reasonable actions necessary to make a final determination whether or not to convey land pursuant to the application, and notify the applicant of that determination, to the extent practicable, before the end of the 180-day period beginning on that date.

(e) **PARCELS WITHDRAWN IN AID OF FUNCTIONS OF FEDERAL AND STATE AGENCIES.**—If a parcel has been withdrawn in aid of a function of a Federal agency other than the Department of Agriculture or of an agency of a State or political subdivision of a State (including a water district), the Secretary may dispose of the parcel under this section only with the consent of the agency.

(f) **CONVEYANCES AND LEASES.**—

(1) **CONVEYANCES.**—The Secretary may convey a parcel to the State or a political subdivision of a State in which the parcel is located if the proposed use is not inconsistent with the land allocations within applicable land and resource management plans under the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).

(2) **LEASES.**—The Secretary may lease a parcel to the State or a political subdivision of a State in which the parcel is located, at a reasonable annual rental,

for a period up to 25 years, and, at the discretion of the Secretary, with a privilege of renewal for a like period, if the proposed use is not inconsistent with the land allocations within applicable land and resource management plans under the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).

(3) CONSIDERATION.—The conveyance of lease of a parcel for purposes under this section shall be made at a price to be fixed by the Secretary, consistent with the pricing structure established by the Secretary of the Interior under the Act of June 14, 1926 (43 U.S.C. 869 et seq.).

(g) ACREAGE LIMITATIONS AND PROPERTY DESCRIPTIONS.—

(1) ACREAGE LIMITATIONS.—A conveyance under this section may not exceed 100 acres, unless the parcel contains facilities that have been determined by the Secretary to be suitable for disposal under the authority of the General Services Administration. This limitation shall not be construed to preclude an entity from submitting subsequent applications under this section for additional land conveyances if the entity can demonstrate to the Secretary a need for additional land.

(2) DESCRIPTION OF PROPERTY.—If necessary, the exact acreage and legal description of the real property conveyed under this subsection shall be determined by a survey satisfactory to the Secretary and the applicant. The cost of the survey shall be borne by the applicant.

(3) RECREATION AND PURPOSES ACT.—Section 1 of the Act of June 14, 1926 (commonly known as the “Recreation and Public Purposes Act”; 43 U.S.C. 869), as amended, is further amended by adding at the end the following:

“(d) DESCRIPTION OF PROPERTY.—If necessary, the exact acreage and legal description of the real property conveyed under this section shall be determined by a survey satisfactory to the Secretary and the applicant. The cost of the survey shall be borne by the applicant.”

(h) RESERVATION OF MINERAL RIGHTS.—Each conveyance or lease under this section shall contain a reservation to the United States of all mineral deposits in the parcel conveyed or leased and of the right to mine and remove the mineral deposits under applicable laws (including regulations).

(i) USE OF THE LEASED LAND FOR UNAUTHORIZED PURPOSES.—Each lease under this section shall contain a provision for termination of the lease of a finding by the Secretary that—

(1) the parcel has not been used by the lessee as specified in the lease for a period greater than 5 years; or

(2) the parcel or any part of the parcel is being devoted to a use other than that for which the lease was made.

(j) CONDITIONS OF CONVEYANCE; REVERSION FOR NONCOMPLIANCE.—

(1) CONDITIONS OF CONVEYANCE.—

(A) TRANSFER OF TITLE.—

(i) IN GENERAL.—Except as provided in clause (ii), title to a parcel conveyed by the Secretary under this section may not be transferred by the grantee or a successor or the grantee.

(ii) EXCEPTION.—With the consent of the Secretary in accordance with this section, title to a parcel may be transferred to the State or a political subdivision of the State in which the parcel is located.

(B) USE.—

(i) IN GENERAL.—Except as provided in clause (ii), a grantee or a successor of the grantee may not change the use specified in the conveyance of a parcel under this section to another or additional use.

(ii) EXCEPTION.—Upon application and appropriate public participation, the Secretary may approve a change in use of a parcel to another recreational, educational or other public use, in accordance with this section.

(2) REVERSION FOR NONCOMPLIANCE.—If at any time after a parcel is conveyed by the Secretary, the grantee or a successor of the grantee, without the consent of the Secretary, attempts to transfer title to or control over the parcel to another person or entity or to devote the parcel to a use other than that for which the parcel was conveyed, title to the parcel shall revert to the United States.

(k) PRIOR CONVEYANCES.—On application by the State or a political subdivision of the State in which the parcel is located, the Secretary may authorize a transfer of title or a change in use in accordance with subsection (j) with respect to any parcel conveyed under this section or any other law.

(l) SOLID WASTE DISPOSAL SITES.—

(1) CONVEYANCE FOR THE PURPOSES OF SOLID WASTE DISPOSAL.—If the Secretary receives an application for conveyance of a parcel under this section for

the purpose of solid waste disposal or for another purpose that the Secretary finds may include the disposal, placement, or release of any hazardous substance, the Secretary may convey the parcel subject only to this subsection.

(2) INVESTIGATION.—

(A) IN GENERAL.—Before any conveyance of a parcel under this subsection the Secretary shall investigate the parcel to determine whether any hazardous substance is present on the parcel.

(B) ELEMENTS OF AN INVESTIGATION.—An investigation under subparagraph (A) shall include—

- (i) a review of any available records of the use of the parcel; and;
- (ii) all appropriate analyses of the soil, water and air associated with the parcel.

(C) PRESENCE OF A HAZARDOUS SUBSTANCE.—A parcel shall not be conveyed under this subsection if the investigation indicates that any hazardous substance is present on the parcel.

(3) SUBMISSION TO OTHER STATE AND FEDERAL AGENCIES.—No application for conveyance under this subsection shall be acted on by the Secretary until the applicant has furnished evidence, satisfactory to the Secretary, that a copy of the application and information concerning the proposed use of the parcel covered by the application has been provided to the Environmental Protection Agency and to all other State and Federal agencies with responsibility for enforcement of Federal and State laws applicable to land used for the disposal, placement, or release of solid waste or any hazardous substance.

(4) WARRANTY.—No application for conveyance under this subsection shall be acted on by the Secretary until the applicant gives a warranty that—

(A) use of the parcel covered by the application will be consistent with all applicable Federal and State laws, including laws dealing with the disposal, placement, or release of hazardous substances; and

(B) the applicant will hold the United States harmless from any liability that may arise out of any violation of any such law.

(5) REQUIREMENTS.—A conveyance under this subsection shall be made to the extent that the applicant demonstrates to the Secretary that the parcel covered by an application meets all applicable State and local requirements and is appropriate in character and reasonable in acreage in order to meet an existing or reasonably anticipated need for solid waste disposal or for another proposed use that the Secretary finds may include the disposal, placement, or release of any hazardous substance.

(6) CONDITIONS.—

(A) IN GENERAL.—A conveyance of a parcel under this subsection shall be subject to the conditions stated in this paragraph.

(B) REVERTER.—

(i) IN GENERAL.—The instrument of conveyance shall provide that the parcel shall revert to the United States unless substantially all of the parcel has been used, on or before the date that is 5 years after the date of conveyance, for the purpose specified in the application, or for other use or uses authorized under subsection (b) with the consent of the Secretary.

(ii) LIMITATION.—No portion of a parcel that has been used for solid waste disposal or for any other purpose that the Secretary finds may result in the disposal, placement, or lease of a hazardous substance shall revert to the United States.

(C) PAYMENT TO THE SECRETARY ON FURTHER CONVEYANCE.—If at any time after conveyance any portion of a parcel has not been used for the purpose specified in the application, and the entity to which the parcel was conveyed by the Secretary transfers ownership of the unused portion to any other person or entity, transferee shall be liable to pay the Secretary the fair market value of the transferred portion as of the date of the transfer, including the value of any improvements thereon.

(D) USE OF PAYMENTS.—Subject to the availability of appropriations, all amounts received by the Secretary under subparagraph (C) shall be retained by the Secretary, shall be available to the Secretary for use for the management of National Forest System land, and shall remain available until expended.

## PURPOSE OF THE MEASURE

The purpose of H.R. 150 is to authorize the Secretary of Agriculture to convey National Forest System lands for use for educational purposes, and for other purposes.

## BACKGROUND AND NEED

H.R. 150 will establish a national mechanism for communities adjacent or surrounded by National Forest System lands, to apply to the Secretary of Agriculture for National Forest System land to build, renovate, or expand rural educational, recreational or other public facilities. Under the Recreation and Public Purposes Act (R&PPA) only communities near Bureau of Land Management (BLM) lands can apply for conveyances of small tracts of land at nominal costs. H.R. 150 is modeled after R&PPA.

## LEGISLATIVE HISTORY

H.R. 150 was introduced on January 6, 1999, by Congressman Hayworth, Stump, Underwood, Goodlatte, Schaffer, Gibbons, McDermott, Chenoweth, and Miller. On June 8, 1999, the bill passed the House by a vote of 420–0. The Subcommittee on Forests and Public Land Management held a hearing on H.R. 150 and a similar bill, S. 1184, on July 21, 1999. At the business meeting on February 10, 2000, the Committee on Energy and Natural Resources ordered H.R. 150 reported favorably if amended as described herein.

## COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on February 10, 2000, by a voice vote of a quorum present recommends that the Senate pass H.R. 150 if amended as described herein.

## COMMITTEE AMENDMENTS

The amendments expands the purposes of the act from education purposes, to include education, recreation, and other public purposes. In addition, the amendment added the following restrictions: The conveyance must serve the public interest, and the land if not otherwise needed by the Forest Service; the acreage must be reasonable, and not exceed 100 acres in any one conveyance; the conveyances would be at a minimal cost, and without mineral rights; and the lands would revert back to the Forest Service if they are no longer needed for the purpose of this bill.

## SECTION-BY-SECTION ANALYSIS

Section 1 designates the title of the act as the “National Forest Education and Community Purposes Land Act”.

Section 2 describes the findings of Congress.

Section 3 provides the definitions used in the Act.

Section 4(a) authorizes the Secretary of Agriculture to dispose of National Forest System land to a state or a political division of a state for educational, recreational or other purposes if the Secretary determines that certain conditions are met:

Subsection (b) describes the conditions that must be met before a parcel can be transferred.

Subsection (c) requires the Secretary to provide an opportunity for public participation.

Subsection (d) requires the Secretary to notify an applicant within 14 days that the application has been received. If the parcel is for recreation, educational or other public purposes related to emergency services, this subsection requires the Secretary to make a determination whether or not to convey within 120 days of receipt of the application and notify the applicant. If the parcel is for another purpose, this subsection states that the Secretary will have 180 days to determine whether or not to convey the parcel and notify the applicant.

Subsection (e) requires the consent of other agencies if a parcel was withdrawn for them.

Subsection (f) allows the Secretary to convey lands if the uses are compatible with an applicable land management plan, or to lease the parcel for up to 25 years if no inconsistent with the applicable land and resource management plan. The price will be fixed consistent with the Recreation and Public Purposes Act.

Subsection (g) limits a single conveyance to 100 acres except when facilities suitable for disposal are involved. This subsection requires that size and description be determined by a survey paid by the applicant. Paragraph 3 amends the Recreation and Public Purposes Act for conveyances of BLM lands.

Subsection (h) reserves mineral rights to the United States.

Subsection (i) requires termination of a lease if the parcel is not used for 5 years, or is not used for the intended purposes.

Subsection (j) prohibits transfer of title or change of use of a parcel. If such a change occurs, the parcel reverts to the United States.

Subsection (k) authorizes the Secretary, upon application by a state or political subdivision of a state, to transfer title of the parcel in accordance with subsection (j).

Subsection (l) requires the Secretary to take certain steps if the application requests a parcel for solid waste disposal, including coordination with other relevant agencies, additional conditions and limitations, and revisions and liability requirements.

#### COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate the costs of this measure as amended has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 150.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 150, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

On July 21, 1999, the Committee on Energy and Natural Resources requested legislative reports from the Department of Interior and the Office of Management and Budget setting forth Executive agency recommendations on H.R. 150. These reports had not been received at the time the report on H.R. 150 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Forest Service at the Subcommittee hearing follows:

#### STATEMENT OF PAUL BROUHA, ASSOCIATE DEPUTY CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the subcommittee: Thank you for the opportunity to be here today to present the Administration's views concerning H.R. 150, "Education Land Grant Act," which would authorize the Secretary of Agriculture to convey National Forest lands for educational purposes. I am accompanied today by James B. Snow, Deputy Assistant General Counsel of the Department of Agriculture, who is our legal counsel on realty and public land law matters.

The Administration supports education which is one reason why we have proposed increasing payments to states \$259 million over the next five years.

The Administration previously commented on H.R. 150 during a February 4, 1999 hearing before the House Resources Committee, Subcommittee on Forests and Public Lands. We appreciate the House Resources Committee's work to address many of the Administration's concerns with H.R. 150 as originally introduced.

The Administration does not object to H.R. 150, but we still have several significant problems regarding it. Even though the scope of this legislation is limited to applications for educational purposes and for lands identified as no longer necessary for National Forest purposes we are still concerned that: (1) taxpayers will not receive fair market value for their assets; (2) the deadline requirement to make the conveyance decision within 120 days is inadequate; and (3) applications should be limited to only communities surrounded by National Forest lands.

With the issue of fair market value, our concerns are the same as those expressed on S. 1184.

Second, the deadline requirement to make the conveyance decision within 120 days is inadequate. We appreciate the recognition by the House Resources Subcommittee that the original requirement of 60 days was too short. However, 120 days still does not allow enough

time to comply with the requirements of other laws and regulations that are necessary to make a decision of this magnitude. Decisions about the appropriate uses of national Forest lands and resources are guided by forest planning under the National Forest Management Act (NFMA) and environmental analysis under the National Environmental Policy Act (NEPA). Forest land and resource management planning is the process by which we identify lands for disposal. This process requires extensive public involvement and environmental analysis that often involves the ten planning steps listed in the NFMA regulations. Once lands have been identified and a proponent submits an exchange proposal, the environmental analysis process begins. We send scoping notices notifying the public of the proposal and allow them 30 days to comment. This analysis process involves evaluation for threatened and endangered species, cultural sites, and other requirements of law. In addition, the public is provided extensive opportunities to provide information and voice their concerns and perspectives. This public involvement requires a minimum of 45 days to comment on a proposal and 30 days to allow for administrative appeals. Accomplishing all these requirements easily exceeds 120 days.

It is difficult to predetermine an appropriate amount of time necessary to complete the environmental analysis. In fact, such a limit would only serve to create expectations that the agency could not meet and undermine the credibility of its public involvement and environmental analysis processes. The agency strongly believes that attempts to short circuit environmental and public processes will only lead to more controversy.

Third, we would prefer to see the legislation limit applications to only communities surrounded by National Forest lands. It appears the intent of this legislation is to assist communities where private land is not readily available for schools.

#### CLOSING

Mr. Chairman, the Administration supports the general objective of making federal lands available for recreation, education and other public purposes. However, the Administration feels that it has the existing authorities necessary to provide this assistance.

This concludes my statement. I would be happy to answer any questions you and Members of the Subcommittee might have.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of the rule XXVI of the Standing rules of the Senate, the Committee notes that no changes in existing law are made by H.R. 150, as ordered reported.